

(2004) 09 AHC CK 0051
In the Allahabad High Court
Case No : Criminal Appeal No. 3064 of 1981

Sheo Charan and Gokul (In Jail)	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 24-09-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 09 AHC CK 0051

Hon'ble Judges : Poonam Srivastava, J; M.C. Jain, J

Bench : Division Bench

Advocate : V.S. Singh, Dilip Kumar and Rajeev Gupta, for the Appellant; S.S. Yadav and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—Two real brothers, namely, Sheo Charan and Gokul faced trial before the III Additional Sessions Judge, Hamirpur in S.T. No. 169 of 1979 for the murder of one Smt. Bari Bahu. By judgement and order dated 24.11.1981, they came to be convicted by the trial court u/s 302 I.P.C. with the sentence of life imprisonment. Appellants of the instant appeal have challenged their conviction and sentence.

2. Sheo Charan died during pendency of the appeal and the same abated respecting him under order 26.8.2064. This Appellate Court is, therefore, now only concerned with the appellant No. 2 Gokul.

3. The incident occurred on 7.6.1979 at about 7.00 A.M. in village Atrauliya within police station Rath, District Hamirpur. The deceased was allegedly done to death by the accused appellant Gokul and his deceased brother Sheo Charan by shooting. The report was lodged the same day at 10.30 A.M. by Brindaban PW 1 husband of the deceased.

4. The prosecution case as unfolded during the trial was like this. The deceased had earlier been married to Ram Lal elder brother of the accused appellant Gokul

and his deceased brother Sheo Charan. Ram Lal died about 25-26 year back. Two years thereafter she remarried with Brindaban PW 1. She (Bari Bahu) had inherited 18 acres of land from he previous husband Ram Lal as his sole legal heir. It is an admitted fact that there was no dispute between the accused and deceased till she remarried with Brindaban PW 1 after the death of her previous husband Ram Lal. She even got her name mutated in revenue papers in respect of the land inherited by her. However, dispute started between her and her brother-in-laws (accused) after she solemnized second marriage with Brindaban PW 1. There was protracted litigation of partition in respect of 18 acres of land between her and accused persons. The parties litigated up to High Court and the case was remanded back. It was pending in the court of the C.O., Rath when this incident took place. The litigation over this land was the root cause of animosity between her and her brother-in-laws accused and the motive of her murder was also the dispute over land.

5. On the eventful day and time, she accompanied by her husband Brindaban PW 1 and Bal Kishan was going to Rath so as to attend her case fixed in the court of C.O. at Rath. Babu Ram PW 2 was also going to Rath at that time. Bari Bahu was 14-15 paces ahead of others and when she reached between the fields of Shiv Dayal and Harish Chand, the two accused confronted her. They shouted at her and her companions, asking them to stop by using abusive words. Instantaneously, both the accused opened shots on her from country made pistols. She fell down. The witnesses raised shouts but the accused made their escape good towards eastern side. Bari Bahu died at the spot. Leaving the corpse of his wife in the care of Babu Lal, PW 2 and Bal Kishan. Brindaban PW 1 came to his village Mawai to pick up his cousin brother Lok Nath for writing the F.I.R. He accompanied by Lok Nath, returned to the scene of occurrence and therefrom to the nearby Police Station Rath. He got the report Ext. Ka 1 scribed by Lok Nath in Ram Lila ground at Rath and handed over the same at the police station. where a case was registered by Head Constable Shyam Lal PW 3. Investigation was taken up by S.I. Mahabir Chaudhary PW 5. He reached the spot with other police personnel. He prepared the inquest report of the dead body of the deceased along with other necessary papers. The dead body was sealed and sent for post mortem. The spot of the incident was inspected by him and a site plan prepared. Blood-stained and simple earth were collected by him. He also found two empty cartridges and two wads at the spot which he took in possession and sealed. He also took in possession certain items of silver jewellery and a gold ear ring from the dead body of the deceased and sealed the same.

6. Post mortem over the dead body of the deceased Bari Bahu was conducted by Dr. A.K. Srivastava PW 4 on 7.6.1979 at 4.30 P.M. in the mortuary at Rath. The deceased was aged about 50 years. The following ante mortem injuries were found on her person:-

1. Gunshot entry wound 3 cm x 2.5 cm with scorching around the wound size 8 cm x cm on right side neck and 5 cm below lobule of right ear. Clots present.

2. Gunshot exit wound 7 cm x 5 cm in front side neck, 3 cm above upper border of sternum. Clots present. Injury Nos. 1 communicating. with injury No. 2.

3. Gunshot entry wound 2 cm x 1.5 cm on left side chest, 5 cm below mid of left clavicle. Clots present.

4. Gunshot exit wound 2.5 cm x 2 cm on left side back and 5 cm below left angle of scapula. Clots present. Injury No. 3 communicating with injury No. 4.

7. On internal examination, brain was found to be soft. Muscles and vessels of left side neck were lacerated and congested. Fracture of thyroid cartilage. 1st and 2nd rib on left side of chest and 7th rib on right side back had been found. Left lung and pleura were lacerated and congested. Stomach was full with semi-digested food. Small intestine was empty but large intestine was full. The cause of death was shock and haemorrhage resulting from ante-mortem injuries.

8. The defence was of denial and false complicity.

9. At the trial, the prosecution examined two eye witnesses, namely, Brindaban PW 1 and Babu Rani PW 2, besides the constable who scribed the chick F.I.R., Doctor who conducted the autopsy and the Investigating Officer The trial court found the case to be proved and recorded the impugned judgement.

10. We have heard Sri V.S. Singh, learned counsel for the surviving accused-appellant Gokul and Sri S.S. Yadav, learned A.G.A. from the side of the State. The challenge to the impugned judgement is on the grounds that the F.I.R. was delayed one; that the accused did not have any motive to commit the crime: that time and place of the incident were doubtful and that the two eye-witnesses examined by the prosecution were not at all reliable for being believed. We propose to deal with these submissions in the discussion that follows, having regard to the evidence and material on record.

11. The contention of the F.I.R. being delayed is wholly unmerited. For the incident taking place at about 7.00 A.M. the report was lodged by an eye witness, namely, Brindaban PW 1 at 10.30 A.M. True, the distance of the Police Station was about one kilometre from the place of incident but the regard is to be had to the explanation offered by the informant. After the ghastly incident of shooting of his wife, he had left for his house situate at a distance of four miles from the place of spot, leaving behind Babu Ram PW 2 and Bal Kishan by the side of the dead body. He had first gone to his house to inform his family members. From the house, he picked up his cousin Lok Nath to write the F.I.R. He again came to the spot and then went to the Police Station where the F.I.R. was lodged. It was quite natural that about 3 1/2 hours intervened between the incident and the lodging of the F.I.R. The complainant could not be expected to run to the Police Station from the spot and to lodge the F.I.R. like a machine. The sudden incident stunned him. There is nothing unusual that it struck to his mind to first go to his house, returning with another family member Lok Nath and then lodging the F.I.R. We accordingly reject the argument of the alleged late lodging of

the F.I.R.

12. We now come to the motive aspect. Though motive loses much of its significance in a case of direct evidence like the present one, but the presence of motive heightens the probability and at times satisfies the judicial mind about the authorship of a crime. Far from the absence of motive, the accused-appellants had a very strong motive to commit the murder of the unfortunate lady who happened to be the previous wife of their deceased brother Ram Lal. The deceased had inherited 18 acres of land of her previous husband Ram Lal brother of the accused. Such land devolved upon her as being his sole heir. It has come in evidence that Ram Lal had died about 25 years before the incident and after two years of his death, she had solemnized second marriage with Brindaban PW 1. There was protracted litigation between her and accused over the land of Ram Lal which had been inherited by her (deceased}. The matter had been remanded by High Court and the case was pending in consolidation court in which date was fixed on the eventful day. The deceased was going to attend the court case on that date with her husband when the incident occurred in the way. The land having been inherited by the deceased from her previous husband Ram Lal (brother of the accused), they (accused) were to be the direct beneficiary if she was eliminated from the scene. She was the biggest hurdle in their way in succeeding to that land. On her elimination, the holding of Ram Lal was immediately to revert back and devolve upon his brothers (accused) as they were the next surviving heirs of the last male bhumidhar (Ram Lal). Therefore, there was a very strong motive on the part of the accused to commit the murder of the deceased lady. The unfortunate lady has no enmity with any body else.

13. The time of the incident has been challenged by the learned counsel for the surviving accusee-appellant on the basis of the post mortem report prepared by Dr. A.K. Srivastava. PW 4 On 7.6.1979 at 4.30 P.M. in which the probable time since death has been written as about one day and the condition of brain has been described as soft in internal examination of the dead body. The learned counsel for the appellant urged that these facts belied the prosecution case of the incident having taken place on 7.6.1979 at about 7.00 A.M. We are of the opinion that the Doctor casually and loosely described the probable time of death as about one day preceding post mortem. We note that he specifically stated in his statement before the court that the deceased could have died on 7.6.1979 at about 7.00 A.M. He seemingly meant that the death had taken place within a day. So far as the condition of brain is concerned, it is to be kept in mind that the incident had taken place in extreme summer season of the month of June. As per medical science, the putrefaction of brain is hastened if there is any injury to the brain or skull. In extreme summer month of June, it could be soft and pulpy at the time the post mortem was conducted. Medical science is not so perfect as to be able to tell the precise time of death of the deceased in a computerized mathematical manner. In the case at hand, one of the shot injuries caused to the deceased was on right side of neck which could result in the brain becoming soft and pulpy earlier than in normal circumstances. To say in other words, the injury

on the neck of the deceased brought about softness of the brain within 9-10 hours of her death.

14. The place of the incident was doubted on the ground that as per record, the site-plan was received in the court of Sessions on 4.9.1979, though charge-sheet was submitted by the Investigating Officer on 14.6.1979. When interrogated, S.I. Mahavir Chaudhary, PW 5 could not say as to where the site-plan remained till 4.9.1979. We do not think that it is a valid ground to doubt the place of incident and to argue that the site-plan is a spurious document subsequently brought on record. The perusal of the original site-plan on record shows that it was prepared by the Investigating Officer on 7.6.1979. May be that owing to some mistake or inadvertence, it could be filed before the Sessions court only on 4.9.1979. On this premise, neither the genuineness of the site-plan nor the place of incident can be doubted. The spot had been inspected by the Investigating Officer on the day of the incident itself. The Investigating Officer had collected blood-stained and simple earth as also two empty cartridges and two wads from the place of incident where the dead body of the deceased was found in a pool of blood. Such recoveries lend credence to the eye-witness account of the incident having taken place at the complained spot.

15. Therefore, the argument questioning the time and place of the incident is also lost.

16. Coming to the last argument of the learned counsel for the accused-appellant levelling criticism against testimony of two eye-witnesses, on scrutiny we find that the same is not sustainable. The presence of Brindaban PW 1 (husband of the deceased) at the time of the incident was quite natural that he was accompanying his wife (deceased) to attend the court case fixed for that day relating to the land dispute with the accused. Indeed, the illiterate lady would not have gone to attend the case all-alone. It was very natural for her to have taken her husband with her to attend the case. He and his wife had started journey quite early in the morning before sunrise to attend the case in the court of C.O. at Rath. They were going on foot. Bari Bahu was proceeding 14-15 steps ahead of him and other companions. The accused were found standing on the way near the bamba of village Atraulia. Hurling abuses, both of them opened one shot each on the deceased. To the same effect is the testimony of Babu Ram PW 2 who also gave eye-witness account of this shooting incident. He well explained his presence that he was accompanying Bari Bahu and her husband Brindaban to reach the bazar of Rath as he had to make purchases of some cloths. He resided in the village of Brindaban PW 1 and the deceased. In order to get company, he had also got up in early morning hours and was accompanying Bari Bahu, her husband Brindaban and Bal Kishan. He corroborated the statement of Brindaban PW 1 as to how and where the two accused opened shots on the deceased, giving reasonable details of the manner of the assault to which the victim was subjected at the hands of the accused. Learned counsel for the surviving accused-appellant argued that he had no particular business to be with the deceased at

the relevant time and could and would have gone to the market in day time. The argument is not appealing. Man is a social animal. Time is not the essence of life of the villagers. It is not a matter of criticism that for the sake of company, he also went for the market early which could be convenient to him to avoid the heat of the sun also. This witness had no enmity with the accused which could prompt him to depose falsely against them. He knew the accused from before the incident, although he ascertained their names from the complainant at the spot. Since he knew them from before, it was immaterial that their names were not known to him earlier to the incident. It cannot be doubted that this witness was acquainted with the accused, though he was not familiar with their names. He correctly spoke about this place of the domicile of the accused as Atrauliya. We note that he was also a witness of the Panchayatnama prepared by the Investigating Officer that very day. He gave all details about the topography of the place of incident.

17. The learned counsel then argued tht both the eyewitnesses spoke in one voice that two accused had fired from a distance of 6-7 steps. But there was scorching in the gun shot wound of entry on the right side of the neck whereas there was no such sign in the gun shot wound of entry on the left side of her chest. Suffice it to say in this regard that it does not at all produce any inconsistency between the eye witness account and the medical evidence. The deceased sustained two gun shot wounds of entry, one on the neck and the other on chest with corresponding exit wounds. It is in conformity with the eye-witnesses account that each of two accused opened one gun shot on the deceased. The Supreme Court has held in the case of State of Uttar Pradesh Vs. Sughar Singh and Others, that inconsistency relating to the distance from where the gun shots were fired, between medical evidence and eye-witness account, is of no significance when the prosecution evidence pertaining to assault by firearms substantially tallies with the medical evidence. We are clear in our mind that the eye-witnesses could not be expected to speak about the distance of firing with mathematical accuracy and the defence does not gain any point by the fact that there was scorching in one gun shot wound of entry while there was no such sign in the other. By and large, there is harmony between the medical evidence and ocular testimony, the deceased sustaining 2 gun shots of entry (one at the hand of each of the two accused) with corresponding exit wounds as deposed by the eye-witnesses and as found in autopsy report.

18. Having dispassionately examined all the arguments of the learned counsel for the surviving accused appellant keeping in view the evidence on record and related circumstances, we do not locate any merit therein The appeal is devoid of force and is liable to be dismissed.

19. The appeal is accordingly dismissed. The surviving accused-appellant Gokul is on bail The Chief Judicial Magistrate. Hamirpur shall cause him to be arrested and lodged in jail to serve out the sentence of life imprisonment passed against him u/s 302 I.P.C.

20. The appeal has already abated respecting the other accused-appellant Sheo Charan under order 26.8.2004.

21. Judgment be certified to the lower court for reporting compliance within two month from the date of receipt of a copy of this order.